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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/612,062

07/01/2003

Donald J. Curry

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06/21/2007

EXAMINER

NGUYEN, MADELEINE ANH VINH

ART UNIT

PAPER NUMBER

2625

MAIL DATE

DELIVERY MODE

06/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/612,062

Applicant(s)

CURRY ET AL.

Examiner

Madeleine AV Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 12/10/03,05/12/04.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claim 1 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

3. Claim 2 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 2 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

4. Claim 3 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 3 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

5. Claim 4 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 4 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

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6. Claim 5 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 5 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

7. Claim 6 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 6 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

8. Claim 7 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 7 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

9. Claim 8 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

10. Claim 9 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 9 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

11. Claim 10 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 10 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

12. Claim 11 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 11 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

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13. Claim 12 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 12 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

14. Claim 13 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 13 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

15. Claim 14 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 14 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

16. Claim 15 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 15 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

17. Claim 16 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 16 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

18. Claim 17 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 17 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

19. Claim 18 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 18 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

20. Claim 19 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 19 of copending Application No. 10/612,261. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.
21. Claim 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.
22. Claim 2 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 2 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.
23. Claim 3 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 3 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.
24. Claim 4 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 4 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.
25. Claim 5 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 5 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.
26. Claim 6 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 6 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.
27. Claim 7 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 7 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.
28. Claim 8 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.
29. Claim 9 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 9 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

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30. Claim 10 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 10 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

31. Claim 11 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 11 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

32. Claim 12 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 12 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

33. Claim 13 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 13 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

34. Claim 14 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 14 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

35. Claim 15 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 15 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

36. Claim 16 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 16 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

37. Claim 17 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 17 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

38. Claim 18 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 18 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

39. Claim 19 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 19 of prior U.S. Patent No.6,975,331. This is a double patenting rejection.

Claim Rejections - 35 USC § 101

40. Claims 17-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 17-19 are drawn to non-functional descriptive material. MPEP 2106.IV.B.1(a) (Nonfunctional Descriptive Material) states:

“Descriptive material that cannot exhibit any functional interrelationship with the way in which computing processes are performed does not constitute a statutory process, machine, manufacture or composition of matter and should be rejected under 35 U.S.C. 101.”

“Where certain types of descriptive material, such as music, art, photographs and mere arrangements or compilations of facts or data, are merely stored so as to be read or outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing process performed by the computer, then such descriptive material alone does not impart functionality either to the data as so structured, or to the computer.”

“For example, music is commonly sold to consumers in the form of a compact disc. In such cases, the know compact disc acts as nothing more than a carrier for nonfunctional descriptive material. The purely nonfunctional descriptive material cannot alone provide the practical application for the manufacture.”

MPEP 2106.IV.B.1 (Nonstatutory Subject Matter) states:

“When nonfunctional descriptive material is recorded on some computer-readable medium, it is not statutory since no requisite functionality is present to satisfy the practical application requirement”.

Claims 17-19 currently recite a database comprising a first look-up table and a second look-up table which are compilations of data and are merely stored so as to be read or outputted without creating any functional interrelationship. There is no functional relationship imparted by this data to a computing device. Therefore, the claim is drawn to non-functional descriptive material which is non-statutory per se. The fact that the claim recites a database does not provide

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the utility (i.e., practical application in the technological arts) required under 35 U.S.C. 101 for the manufacture.

Conclusion

41. Claims 1-19 are rejected.

42. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeleine AV Nguyen whose telephone number is 571 272-7466. The examiner can normally be reached on Tuesday-Thursday 12:30-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward L. Coles can be reached on 571 272-7402. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Madeleine AV Nguyen
Primary Examiner
Art Unit 2625

June 14, 2007